IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5673 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

DHORAJI TALUKA COOPERATIVE PURCHASE AND SALE UNION LTD.
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 5673 of 2002
MR PS CHAMPANERI for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE H.K.RATHOD

Date of decision: 23/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard. Rule. Ms. D.S.Pandit, learned AGP waives service and accepts notice of rule.

2. On the request of learned counsel for the parties, this petition is taken up today for final disposal.

3. In this writ petition under Article 226 of the Constitution of India, the petitioner - Dhoraji Taluka Cooperative Purchase and Sale Union Ltd. has been praying for direction in the nature of mandamus quashing and setting aside the communication and decision dated 17.5.2002 (Annexure-C), and also for further direction to respondent nos.2 and 3 to hold and conduct the election of the members of the Executive Committee of the petitioner society within a reasonable time framed and in alternative, to hold and conduct the election of the members of the Executive Committee of the petitioner society pursuant to the proposal forwarded by the petitioner society vide Annexure-A.

4. The say of the petitioner is that the petitioner is a Taluka Level Federal society and the term of the members of the Executive Committee of the petitioner society is for a period of three years. The last election of the members of the Executive Committee of the petitioner society was held on 24.5.1999 in view of the provisions contained in Section 145 Z of the Gujarat Cooperative Societies Act. That the first meeting for the purpose of electing Chairman, Vice Chairman and office bearers of the society was held and conducted by the Authorities on 11.6.1999 and, therefore, term of the elected members of the Executive Committee of the petitioner society has ended with effect from 11.6.2002. That the petitioner society submitted the proposal for holding the election of the members of the Executive Committee of the petitioner society to the District Registrar, Cooperative Societies, Rajkot on 11.3.2002 and the same was received on 13.3.2002. The said proposal in turn was forwarded by the District Registrar, Cooperative Societies, Rajkot to the Deputy Collector, Gondal Region, Gondal on 16.3.2002. That the proposal came to be returned on 30.4.2002 by the Deputy Collector, Gondal Region, Gondal to the District Registrar, Rajkot stating that as per the Government instructions the election process is to be postponed till 30.6.2002 and when the election is to be held, fresh proposal may be forwarded.

5. The District Registrar, Rajkot in turn vide his

letter dated 17.5.2002 returned the proposal of the petitioner society on the ground that in view of the letter dated 26.3.2002, issued by the Agriculture and Cooperation Department of Government of Gujarat, the election process and election of the society is ordered not to be held till 30.6.2002. That the general meeting of the petitioner society was convened on 18.5.2002 and General Body Meeting also passed a Resolution unanimously that the term of the members of the Executive Committee of the petitioner society is due to expire on 11.6.2002 and, therefore, if the new election of the members of the Executive Committee of petitioner society is not held by the Government for any reason, the General Body resolved that the present Executive Committee to continue until new committee starts functioning.

It is not in dispute that the term of the elected Executive Committee of the petitioner society was upto 11.6.2002. It is also not in dispute that the petitioner society submitted the proposal on 13/3/2002 for holding election of the members of the Executive Committee of the petitioner society to the District Registrar, Rajkot who in turn forwarded the same to the Deputy Collector, Gondal Region, Gondal on 30.4.2002, but the said proposal came to be returned to the petitioner society stating that no election to be held till 30.6.2002 in view of the letter dated 26.3.2002, issued by the Agriculture and Cooperation Department, Government of Gujarat, and vide communication dated 17.5.2002 the petitioner society was also directed to send fresh proposal as when the election is to be held.

It is stated by Mr. Champaneri that the fresh proposal has been sent on 19.7.2002.

6. The term of the previously elected Executive Committee has expired on 11.6.2002 as the first meeting of the previously elected body was held on 11.6.1999. It needs no emphasis that in the democratic principle election must be held in accordance with the statutory requirement and the same be conducted and over as early as possible and the elected body assume charge of the administration of the society. It has been submitted by Ms. D.S.Pandit, learned AGP, on instructions, that as far as holding of the election of the Executive Committee of the petitioner society is concerned, there is no objection to the same and election has to be held as required, under the provisions of the Act.

7. We, therefore, allow this petition make the rule absolute and issue writ of mandamus directing the

respondent nos. 2 and 3 to hold the election of the Executive Committee of the petitioner society within three months from today in accordance with law.

8. It is clarified that the term of the Executive Committee has expired on 11.6.2002, for the period of 6 months, there is no question of appointing custodian under Section 74 D of the Act. The present Committee will continue till the first meeting of the newly elected Executive Committee of the petitioner society is held.

9. Direct service is permitted.

(N.G.Nandi,J.)

(H.K.Rathod,J.)

(vipul)